

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

GEORGE McGHEE, JR. #74919

PETITIONER

VERSUS

CIVIL ACTION NO. 3:06cv506DPJ-JCS

WARDEN CASTY

RESPONDENT

ORDER

This matter comes before this court, *sua sponte*, for consideration of the transfer of this cause. The petitioner, an inmate currently incarcerated in the East Mississippi Correctional Facility, Meridian, Mississippi, filed this request for habeas corpus relief pursuant to 28 U.S.C. § 2254. Petitioner states that on February 13, 2002¹, he was convicted of burglary in the Circuit Court of Amite County, Mississippi. He was then sentenced to 25 years in the custody of the Mississippi Department of Corrections.

The petitioner has previously filed for habeas relief in this court challenging the same conviction, *McGhee v. State of Mississippi*, 3:04cv630WSu (S.D. Miss. June 21, 2006). On June 21, 2006, this court entered a final judgment dismissing the action with prejudice. The petitioner filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit on July 5, 2006. The Fifth Circuit dismissed his appeal as of January 11, 2007, for want of prosecution. *McGhee v. State of Mississippi*, No. 06-61066 (5th Cir. Jan. 11, 2007).

¹Having reviewed the information from the Mississippi Supreme Court web site, www.mssc.state.ms.us, concerning his appeal, *McGhee v. State*, 2003-KA-562-COA (Miss. 2003), the date of his conviction in criminal case number 02-KR-053-J is February 13, 2003, not February 13, 2002, as stated in his petition.

A petitioner who is filing a second or successive motion for habeas relief must first apply to the appropriate court of appeals for an order authorizing the district court to consider the successive motion. 28 U.S.C. § 2244(b)(3)(A). In the case at bar, the petitioner has failed to submit any documentation demonstrating that he has obtained the required authorization from the United States Court of Appeals for the Fifth Circuit. Therefore, this court has determined that in the interest of justice this cause should be transferred to the United States Court of Appeals for the Fifth Circuit for a determination whether this successive or second petition should be allowed. *See In Re Epps*, 127 F.3d 364 (5th Cir. 1997); 28 U.S.C. § 1631. Accordingly, it is hereby,

ORDERED that this petition for habeas corpus relief be, and the same hereby is, transferred to the United States Court of Appeals for the Fifth Circuit.

IT IS FURTHER ORDERED that the clerk of this court is directed terminate all pending motions and to close this case pending the decision of the United States Court of Appeals for the Fifth Circuit.

SO ORDERED AND ADJUDGED this the 21th day of February, 2007.

s/ Daniel P. Jordan III
UNITED STATES DISTRICT JUDGE